

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EMILY TOLOSA,
Plaintiff,

v.

KENSINGTON REDWOOD CITY LLC,
et al.,
Defendants.

Case No. 21-cv-05564-MMC

**ORDER AFFORDING PARTIES
LEAVE TO FILE SUPPLEMENTAL
BRIEFS; CONTINUING HEARING ON
DEFENDANT KSL'S MOTION TO
REMAND; CONTINUING CASE
MANAGEMENT CONFERENCE**

Before the Court is plaintiff Emily Tolosa's ("Tolosa") "Motion to Remand Action to State Court," filed August 19, 2021. Defendant Kensington Senior Living, LLC ("KSL") has filed opposition, to which Tolosa has replied. Having read and considered the papers filed in support of and in opposition to the motion, the Court finds it appropriate to afford the parties leave to address a jurisdictional issue not addressed in the parties' respective filings, specifically, whether diversity of citizenship exists.

In the above-titled action, Tolosa asserts state law claims arising from her employment by defendants KSL and Kensington Redwood City LLC ("KRC") at a "senior care facilit[y]" in San Mateo, California. (See Compl. ¶¶ 3-4.) Tolosa seeks to proceed on her own behalf and on behalf of a putative class.

In its Notice of Removal, KSL asserts jurisdiction exists over Tolosa's claims under the Class Action Fairness Act ("CAFA"). Under CAFA, a district court has jurisdiction over a class action where the amount in controversy exceeds \$5,000,000 and the parties are minimally diverse. See 28 U.S.C. § 1332(d)(2). Tolosa, in her motion to remand, has disputed KSL's showing as to the requisite amount in controversy. Although Tolosa has

not addressed KSL's showing as to diversity of citizenship, such showing, as set forth below, appears deficient in two respects. See Herklotz v. Parkinson, 848 F.3d 894, 897 (9th Cir. 2017) (holding, "even if parties do not dispute jurisdiction," courts have "independent obligation to assess" jurisdiction).

First, KSL has made no showing as to KRC's citizenship. Although KRC apparently had not been served at the time of removal (see Notice of Removal ¶¶ 6, 9), and Tolosa has not, subsequent to the removal, filed proof of service on KRC, "the existence of diversity is determined from the fact of citizenship of the parties named and not from the fact of service." See Clarence E. Morris, Inc. v. Vitek, 412 F.2d 1174, 1176 (9th Cir. 1969). Second, KSL, although stating it is "organized" under "the laws of the State of Virginia" (see Notice of Removal ¶ 22), has not indicated "the State where it has its principal place of business," see 28 U.S.C. § 1332(d)(10) (setting forth, for purposes of CAFA, test for determining citizenship of "unincorporated association"); Ferrell v. Express Check Advance of SC LLC, 591 F.3d 698, 699-700 (4th Cir. 2010) (holding LLC is "unincorporated association" for purposes of CAFA), and, consequently, KSL has not established diversity under CAFA, see 28 U.S.C. § 1332(d)(2)(a); see also Kanter v. Warner-Lambert Co., 265 F.3d 853, 857-58 (9th Cir. 2001) (holding removing defendants' "failure to specify" one party's citizenship is "fatal" to "assertion of diversity jurisdiction").

Accordingly, the Court hereby affords the parties leave to file supplemental briefing, solely for purposes of addressing the question of diversity of citizenship:

1. No later than October 1, 2021, KSL shall file any supplemental brief, not to exceed five pages in length, exclusive of exhibits.

2. No later than October 15, 2021, Tolosa shall file any supplemental responsive brief, not to exceed five pages in length, exclusive of exhibits.


3. The hearing on Tolosa's motion to remand is hereby CONTINUED to November 5, 2021, at 9:00 a.m.

4. In light of the above, the Case Management Conference is hereby CONTINUED from October 22, 2021, to December 10, 2021, at 10:30 a.m. A Joint Case

1 Management Statement shall be filed no later than December 3, 2021.

2 **IT IS SO ORDERED.**

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4 Dated: September 21, 2021

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6 MAXINE M. CHESNEY
7 United States District Judge
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United States District Court
Northern District of California